C was then recorded. The first mortgage was foreclosed and a sheriff's certificate issued to A. An Iowa statute allowed the owner a year and the junior lienholder nine months within which to redeem. Code, 1897, sec. 4046. After nine months, but before the expiration of a year, B gave $1,500 to X, thereby inducing him to discharge A's lien. After C acquired legal title, B claimed to be subrogated to the rights of the first mortgagee. *Held,* (two judges *dissenting*) that although B's second mortgage was a valid encumbrance on the land, he was not subrogated to the first mortgage, which had been entirely discharged. *Berry v. Krittenbrink* (1922, Iowa) 186 N. W. 428.

The majority of the court, in holding the first mortgage discharged, said: "A discharge of a prior lien by the primary debtor necessarily operates to the benefits of other subsequent lienholders, and this is true regardless of the source of the funds used by the debtor in effecting such discharge." The general rule thus stated is subject to exceptions. Equity applies the principle of conventional subrogation when a third party, pursuant to an agreement that the mortgage is to be kept alive for his security, advances money to a mortgagor to pay off an encumbrance. *Home Savings Bank v. Bierstadt* (1897) 168 Ill. 618, 48 N. E. 161. Such an agreement is said to be "implied," if justice demands it. *Kent v. Bailey* (1917) 181 Iowa, 489, 164 N. W. 852; *Cook v. Kelly* (1917) 200 Ala. 133, 75 So. 953. Where the mortgagor, by fraudulently representing that there are no other encumbrances on the land, obtains a loan in order to pay off a prior mortgage, the doctrine of subrogation is invoked in behalf of the lender on the theory of a constructive trust. *State Sav. Trust Co. v. Spencer* (1918, Mo. App.) 201 S. W. 967; *Hill v. Ritchie* (1916) 90 Vt. 318, 98 Atl. 497; *contra, Southern Trust Co. v. Garner* (1920) 145 Ark. 58, 223 S. W. 369, disapproved in (1920) 34 HARV. L. REV. 86. A resulting trust is raised when one loans money and takes a mortgage in the name of another. *Hanrion v. Hanrion* (1906) 73 Kan. 25, 84 Pac. 381; *In re Tobin's Estate* (1909) 139 Wis. 494, 121 N. W. 144. In the present case, the rights of the purchaser of the land were not prejudiced, and inasmuch as there is no inflexible rule that payment by the principal debtor extinguishes the mortgage, it seems that the minority, in urging that X was merely a trustee for B and that consequently the mortgage should be equitably sustained for B's benefit, adopted the better view.

SALES—WRONGFUL RETENTION OF GOODS BY BUYER.—The defendant refused to pay for paper delivered to him by the plaintiffs on the ground that the paper was of an inferior grade. The plaintiffs demanded that the paper be returned if it was unsatisfactory, and the defendant refused, stating that he would hold it until the plaintiffs sent paper of the agreed quality. The Sales Act provided that the "buyer will be deemed to have accepted goods (a) by verbal or written acceptance (b) by doing any act in relation to them inconsistent with the ownership of the seller (c) by retaining them after a reasonable time in which to examine them has elapsed without rejecting them." Conn. Gen. Sts. 1918, ch. 230, sec. 4714. Acceptance was predicated by the plaintiff on the last ground. *Held,* that the defendant's rejection was conditional, and therefore had the effect of an acceptance. *Fillmore v. Garvin* (1921) 97 Conn. 207, 116 Atl. 184.

A buyer who has not had an opportunity to examine goods prior to delivery is entitled to a reasonable time after delivery in which to examine them. Conn. Gen. Sts. 1918, ch. 230, sec. 4713; *Fiske v. Dunbar* (1919) 118 Me. 342, 108 Atl. 324; *Sponge Divers' Assoc. v. Smith, Kline, & French Co.* (1919, E. D. Pa.) 257 Fed. 328. "Where goods are delivered to a buyer and he refuses to accept them, having the right to do so, he is not bound to return them to the seller, but it is sufficient if he intimates to him that he refuses to accept them." Conn. Gen. Sts. 1918, ch. 230, sec. 4716; *Mulcahy v. Dieudonne* (1908) 103 Minn. 352, 115 N. W.

636; *McCormick, etc. Co. v. Cochran* (1887) 64 Mich. 636, 31 N. W. 561. This section of the statute seems clearly applicable in the instant case. It is admitted that notification of an intention to reject was given to the plaintiff within a reasonable time, but the court was of opinion that the rejection was conditional, and that there was, therefore, no rejection within the meaning of the statute. The defendant made clear his intention never to accept *these goods;* his rejection of them, it seems, was as absolute as it could be. Whether he was justified in retaining the goods after demand was a different question. The retention was clearly such an exercise of dominion over them as would have entitled the plaintiff to recover on ground (b) above. Nevertheless such unjustifiable conduct did not modify in any way his expressed intention never to accept *these goods.* The condition, if there was one, was attached rather to the surrender of the goods than to the rejection of them. If, for example, the defendant had indicated in the letter of rejection an intention not to accept the goods unless the plaintiffs diminished the price, making allowance for the inferior quality, there would have been a conditional rejection. Such, however, was not the case here. Although the instant decision is justified by the statute, it seems to have been based upon the wrong ground.

SPECIFIC PERFORMANCE—RESTRICTIVE BUILDING COVENANTS AS AFFECTING MARKETABLE TITLE.—The plaintiff contracted to sell to the defendant a lot under general building restrictions which provided that "no building shall be erected or permitted within fifty feet of any front street . . . . nor within five feet of any rear line." The lot contained a house less than fifty feet from the front line by 5.17 feet and a garage which touched the rear line. The house had been built before the restrictions were imposed by the company which originally sold the lots. A provision in the restriction allowed a waiver only by the company and then only if the individual owners were not injured thereby, except that two adjoining owners might agree in writing to the erection of a building having one side on the boundary line. The trial court granted specific performance on the ground that the plaintiff had a marketable title. *Held,* (three judges *dissenting*) that the title was not marketable. *Chesebro v. Moers* (1922) 233 N. Y. 75, 134 N. E. 842.

Three principles of construction are generally used in determining what matters of law or fact are sufficient to make a title unmarketable. First, that restrictive covenants will not be extended by implication, but will be strictly construed against the covenantee. *Kjerner v. Hayhurst* (1920) 193 App. Div. 908, 183 N. Y. Supp. 636; *Binswanger v. Hyman* (1921, Pa.) 114 Atl. 628. Second, that the effect of a covenant will be determined by the circumstances existing at the time of its execution. *Clark v. Devoe* (1891) 124 N. Y. 120, 26 N. E. 275; *Dick v. Goldberg* (1920) 295 Ill. 86, 128 N. E. 723. Third, that a purchaser will not be excused from his contract because of the bare possibility that the title may later prove defective. *Duncan v. Glore* (1920) 189 Ky. 132, 224 S. W. 678; *Kenefick v. Shumaker* (1917) 64 Ind. App. 552, 116 N. E. 319; Maupin, *Marketable Title to Real Estate* (3d ed. 1921) 769. Under these principles of construction and in view of the inaction of the covenantees, enforcement of the covenant as to the house would hardly be granted. See *Underwood v. Herman* (1913) 82 N. J. Eq. 353, 89 Atl. 21; *Smith v. Taranto* (1913, Sup. Ct.) 140 N. Y. Supp. 794. Nor could the adjoining owner complain of the rear line violation, having himself erected a garage on the rear line. *Pappas v. Excelsior Brewery Co.* (1915) 170 App. Div. 692, 156 N. Y. Supp. 845. The fact that the purchaser can successfully defend a possible suit does not determine whether there is a marketable title. *Bull v. Burton* (1919) 227 N. Y. 101, 124 N. E. 111. But the remoteness of a suit has often caused the courts in the exercise of their